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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,537	07/01/2003	Claudiu D. Pruteanu	20030168.ORI	4701
23595	7590	10/05/2005	EXAMINER	
NIKOLAI & MERSEREAU, P.A. 900 SECOND AVENUE SOUTH SUITE 820 MINNEAPOLIS, MN 55402			FOX, CHARLES A	
			ART UNIT	PAPER NUMBER
			3652	

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

JK

Office Action Summary

Application No.

10/611,537

Applicant(s)

PRUTEANU ET AL.

Examiner

Charles A. Fox

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-52 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 48 is/are allowed.
- 6) ☒ Claim(s) 25-47 and 50-52 is/are rejected.
- 7) ☒ Claim(s) 49 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>20031014&20041119</u> . | 6) <input type="checkbox"/> Other: ____. |

Drawings

The subject matter of this application admits of illustration by a drawing to facilitate understanding of the invention. Applicant is required to furnish a drawing under 37 CFR 1.81(c). No new matter may be introduced in the required drawing. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). Flow charts showing any method steps as claimed must be provided. As this application appears to be directed mainly towards a method of controlling a packing cycle a flow chart with the claimed steps is required.

Specification

The disclosure is objected to because of the following informalities:

line 33 of page 3 has a word missing between the word "a" and the word "is".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 27 and 28 provides for the use of a control system, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced. Claims 27 and 28 recite a method of using the device as claimed in claim 26.

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but do not add any structure to the device, as such they are not properly dependent claims as method claims can not be dependent upon apparatus claims. The art rejection of these claims below is provided in order to render a complete action on the merits.

Claim 27 and 28 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 25-28,31,45,46, 50 and 52 are rejected under 35 U.S.C. 102(b) as being anticipated by Duell et al. Regarding claim 25 Duell et al. US 6,123,497 discloses a refuse collection vehicle comprising :

a hollow refuse storage enclosure (32) with a forward refuse receiving opening and a tailgate(45);

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a generally full width charging hopper (34) located forward of said storage enclosure;

a followerless packer-ejector panel (50) disposed in said hopper and capable of moving material from said hopper to said storage enclosure as well as ejecting material through said tail gate;

a front loading handling device for depositing refuse into said hopper;

a control system for controlling the packer plate in relation to the front loading device;

wherein the control system allows for a variety of packer stroke cycles and the packer plate always returns to its home position prior to the handling device dumping refuse into said hopper.

Regarding claim 26 Duell et al. also discloses the packing cycles include a short distance cycle and a longer distance cycle.

Regarding claims 27 and 28 Duell further discloses that the packing cycle is based upon the front loader and that the packing cycle is dependent upon the loading device dumping the contents of a container into the hopper.

Regarding claim 45 Duell further discloses that said device only has a front loading device.

Regarding claims 31 and 46 Duell et al. also discloses that said device is mounted on a truck chassis.

Regarding claim 47 Duell et al. further disclose controlling the device with a microprocessor.

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Regarding claim 50 Duell et al. teach a method of using a refuse collection vehicle comprising the steps of:

Operating a packer plate in a stroke cycle with a front end loader wherein the packer plate is controlled such that it returns to its home position before a next container of refuse may be placed in a collection hopper.

Regarding claim %2 Duell et al. further disclose the packing stroke being chosen based upon the loading device being a front end loader.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duell et al. as applied to claim 25 above, and further in view of Johnson et al. Duell et al. teaches the limitations of claim 25 as above, they do not explicitly teach the mechanism for moving the packer plate. Johnson et al. US 5,765,985 teaches a packer plate (24) for a refuse vehicle where said plate is moved by a pair of crossed hydraulic cylinder (54,56). It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Duell et al. with actuators as taught by Johnson et al. in order to decrease the space at the front of the hopper needed for the actuators when the packing plate is retracted, thus allowing for a larger hopper area with no loss of packer plate function.

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Claims 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duell et al. as applied to claims 25 and 28 above, and further in view of Hund, Jr. et al. Duell et al. teaches the limitations of claims 25 and 28 as above, he does not teach the vehicle as having a side loading device. Hund, Jr. et al. US 6,761,523 teaches a refuse collection vehicle (28) with a front hopper that can be loaded with a plurality of loading devices including a side loader (21). It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Duell et al. with a side loader as taught by Hund, Jr. et al. in order to allow the device to pick up a wider variety of trash receptacles for dumping into said vehicle, thereby increasing the usefulness of the vehicle by allowing it to pick up both residential or commercial refuse.

Claims 34-41, 43 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duell et al. in view of Jones et al. Regarding claims 34-37 Duell et al. teaches a refuse collection vehicle comprising :

- a hollow refuse storage enclosure (32) with a forward refuse receiving opening and a tailgate(45);

- a generally full width charging hopper (34) located forward of said storage enclosure;

- a followerless packer-ejector panel (50) disposed in said hopper and capable of moving material from said hopper to said storage enclosure as well as ejecting material through said tail gate;

- a loading handling device for depositing refuse into said hopper;

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a control system for controlling the packer plate in relation to the front loading device;

wherein the control system allows for a variety of packer stroke cycles and the packer plate always returns to its home position prior to the handling device dumping refuse into said hopper. Duell et al. do not teach the loader as being a side type loader.

Jones et al. US 5,360,310 teaches a refuse collection vehicle with a side loader comprising :

a side loader (24) that fits within the confines of the truck body when stowed;

said loader comprising:

an arm (106) with a converging grabber(38,40);

a laterally extending telescopic device (60) for extending and retracting said arm;

an articulated linkage (94a,94b) enabling a container to be held upright until in the proper dumping position. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Duell et al. with a side loader as taught by Jones et al. in order to allow the device to pick up a refuse container from a position that is somewhat removed from the vehicle, therefore allowing the device to access and dump containers that would not be accessible by a conventional loader.

Regarding claim 38 and 40 Duell et al. also discloses the packing cycles include a short distance cycle and a longer distance cycle.

Regarding claims 39 and 41 Duell further discloses that the packing cycle is based upon the loader and that the packing cycle is dependent upon the loading device dumping the contents of a container into the hopper.

Regarding claims 43 and 44 Duell et al. also teaches the device as having a front loader and being mounted on a truck chassis.

Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Duell et al. and Jones et al. as applied to claim 34 above, and further in view of Johnson et al. Duell et al. and Jones et al. teaches the limitations of claim 34 as above, they do not explicitly teach the mechanism for moving the packer plate. Johnson et al. teaches a packer plate (24) for a refuse vehicle where said plate is moved by a pair of crossed hydraulic cylinder (54,56). It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Duell et al. and Jones et al. with actuators as taught by Johnson et al. in order to decrease the space at the front of the hopper needed for the actuators when the packing plate is retracted, thus allowing for a larger hopper area with no loss of packer plate function.

Claim 51 is rejected under 35 U.S.C. 103(a) as being unpatentable over Duell et al. Duell et al. teaches a programmable controller for the packer plate, using short strokes and long strokes. While they do not explicitly teach counting sweep strokes to determine the need for a packing stroke, It would have been obvious to one of ordinary skill in the art, at the time of invention that the packing stroke could be programmed to be activated at any given preset point such as number of sweep strokes or pressure on the packing plate in order to keep the receiving hopper ready to receive more refuse.

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Allowable Subject Matter

Claim 48 is allowed.

Claim 49 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Both claim 48 and 49 have limitations dealing with the linkage members and rotary actuator on the side loading mechanism that are not taught or suggested by the closest prior art of Hund, Jr. et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Fox whose telephone number is 571-272-6923. The examiner can normally be reached between 7:00-4:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached at 571-272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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9-26-05


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